

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:07cv100**

<b>BOB STOUT CONSTRUCTION CO.,</b>	)	
<b>INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>TOWN OF MARSHALL, NORTH</b>	)	
<b>CAROLINA,</b>	)	
	)	
<b>Defendant and</b>	)	
<b>Third-Party Plaintiff,</b>	)	
	)	
<b>Vs.</b>	)	
	)	
<b>CLARK &amp; ASSOCIATES, INC., and</b>	)	
<b>G. CECIL CLARK,</b>	)	
	)	
<b>Third-Party</b>	)	
<b>Defendants.</b>	)	
_____	)	

**THIS MATTER** is before the court on “Mr. Bob Stout’s Motion to Quash Subpoena and for Protective Order.” (#39) <sup>1</sup> Mr. Bob Stout objects to having his deposition taken on September 27, 2007, because he is working on a construction

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<sup>1</sup> The court will not await a response inasmuch as the time for response would be beyond the date of the noticed deposition. The attachments to the motion have provided this court with a clear picture of the scheduling problem.

project in Mountain City, Tennessee . The plaintiff contends the project is in the grading and civil engineering phase and will occupy his time through October 15, 2007, and, further, his Tennessee attorney cannot attend the deposition noticed for September 27, 2007, because he will be in an arbitration in Columbia, South Carolina. The plaintiff requests the court to set the deposition for December. The court is not inclined to do so due to the fact that discovery is to be completed by February 1, 2008. Defendant, on the other hand, cannot take the deposition in either October or November due its counsel's service on the North Carolina Board of Elections.

The need of Mr. Stout to be present at the Mountain City project are not adequate grounds upon which to grant the relief sought; however, the court will accommodate the needs of an arbitration panel in another matter. In resolving this dispute, this court is fairly certain that the AAA does not hold arbitrations on Saturdays, that construction activities either cease or are of limited duration on Saturdays, and knows for certain the North Carolina Board of Elections does not traditionally meet on such day of the week. During the period of time that the court was involved in the practice of law the undersigned found that Saturday was an excellent day to take depositions because attorneys were usually not involved in court hearings on that day of the week. Thus, the court will strike the Notice of Deposition for Thursday, September 27, 2007, and Order that the deposition of Mr. Bob Stout

be taken on Saturday, September 29, 2007, beginning at 9:00 a.m., at the law offices of counsel for defendant in Asheville, North Carolina. If they can agree, the parties are welcome to modify such date and time.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that “Mr. Bob Stout’s Motion to Quash Subpoena and for Protective Order” (#39) is **GRANTED**, the subpoena is **QUASHED**, and the deposition of Mr. Bob Stout is rescheduled and hereby noticed for Saturday, September 29, 2007, beginning at 9:00 a.m. at the law offices of counsel for defendant.

Signed: September 18, 2007

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Dennis L. Howell  
United States Magistrate Judge

